

PROCUREMENT ADVISORY No. 120

Establishing a Minimum Wage for Contractors

1. SUMMARY

This advisory implements a Federal Acquisition Regulation (FAR) class deviation establishing a minimum wage of \$10.10 for contractor employees for payments beginning on January 1, 2015.

2. BACKGROUND

This deviation implements Executive Order 13658, dated February 12, 2014, and OMB Policy Memorandum M-14-09, *Implementation of the President's Executive Order Establishing a Minimum Wage for Contractors*, dated June 12, 2014.

An expedited FAR case is being processed to incorporate this requirement into the FAR.

3. REFERENCES

- a. Executive Order 13658, *Establishing a Minimum Wage for Contractors*, dated February 12, 2014.
- b. OMB Policy Memorandum M-14-09, *Implementation of the President's Executive Order Establishing a Minimum Wage for Contractors*, dated June 12, 2014.
- c. Attachment 1 to this Procurement Advisory: FAR Clause at 52.222-99, *Establishing a Minimum Wage for Contractors* (DEVIATION).
- d. FAR Class Deviation signed by the Director, OPFM.
- e. CAAC Letter 2014-03, Class Deviation from the Federal Acquisition Regulation (FAR).

4. ACTIONS

Effective immediately, contracting officers shall use the attached clause to require payment of an hourly wage of at least \$10.10 to contractor employees, for payments being made **starting January 1, 2015**. Accordingly, for **solicitations and resultant contracts** that include the FAR clause(s) at 52.222-6 and/or 52.222-41, and will be performed, in whole or in part, in the United States (the 50 States and the District of Columbia), contracting officers shall insert the clause at Attachment 1 as follows:

- in **solicitations** issued on or after the date that this deviation is signed (November 3, 2014); and
- to the maximum extent practicable, in **solicitations** issued on or after the date of the Executive Order (February 12, 2014) and before the date of this deviation (November 3, 2014), if the solicitation is otherwise being amended.

Note that the clause flows down to all subcontracts.

Procurement Advisories are issued by the Procurement Policy Division of the Office of Procurement and Property Management, Departmental Management, USDA, and posted on the World Wide Web at: <http://www.dm.usda.gov/procurement/policy/advisories.html>. If you have questions or comments regarding this advisory, please send an email message to procurement.policy@dm.usda.gov.

EXPIRATION DATE: Effective upon issue date until canceled.

— CONTINUED —

52.222-99, Establishing a Minimum Wage for Contractors (DEVIATION)

The contracting officer shall insert the following clause in solicitations and resultant contracts that include the FAR clause(s) 52.222-6 and/or 52.222-41, and work is to be performed, in whole or in part, in the United States (the 50 States and the District of Columbia).

ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS
(DEVIATION 2014-0001) (October 2014)

This clause implements Executive Order 13658, *Establishing a Minimum Wage for Contractors*, dated February 12, 2014, and OMB Policy Memorandum M-14-09, *Implementation of the President's Executive Order Establishing a Minimum Wage for Contractors*, dated June 12, 2014.

(a) Each service employee, laborer, or mechanic employed in the United States (the 50 states and the District of Columbia) in the performance of this contract by the prime Contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the Contractor and service employee, laborer, or mechanic, shall be paid not less than the applicable minimum wage under Executive Order 13658. The minimum wage required to be paid to each service employee, laborer, or mechanic performing work on this contract between January 1, 2015, and December 31, 2015, shall be \$10.10 per hour.

(b) The Contractor shall adjust the minimum wage paid under this contract each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 13658 will be effective for all service employees, laborers, or mechanics subject to the Executive Order beginning January 1 of the following year. The Secretary of Labor will publish annual determinations in the Federal Register no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on www.wdol.gov (or any successor website). The applicable published minimum wage is incorporated by reference into this contract.

(c) The Contracting Officer will adjust the contract price or contract unit price under this clause only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016. The Contracting Officer shall consider documentation as to the specific costs and workers impacted in determining the amount of the adjustment.

(d) The Contracting Officer will not adjust the contract price under this clause for any costs other than those identified in paragraph (c) of this clause, and will not provide price adjustments under this clause that result in duplicate price adjustments with the respective clause of this contract implementing the Service Contract Labor Standards statute (formerly known as the Service Contract Act) or the Wage Rate Requirements (Construction) statute (formerly known as the Davis Bacon Act).

(e) The Contractor shall include the substance of this clause, including this paragraph (e) in all subcontracts.

(End of clause)